IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WA.No. 1365 of 2004()

AGAINST THE ORDER IN RP.481/1997 Dated 06/10/1998

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APPELLANTS/ PETITIONERS 3,4 AND 6 IN THE RP AND IN THE OP

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1. OUSEPH KURIAN, THUNDIYIL PULINCUNNU P.O. PIN-688504, PRL-12.

2. K.A.RETNAMMA AMBUJAKSHY AMMA, ARRACKAL, KANNADY P.O., PIN-688507, MEMBERSHIP NO.7995, PRL-1.

3. K.K.SASIDHARAN, KOMATHUNCHERRY KANNADY P.O., PIN 688507, MEMBERSHIP NO.9052 PRL NO.22.

BY ADV. SMT.C.G.BINDU

RESPONDENTS/RESPONDENTS

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1. ALLEPPEY PRIMARY CO-OPERATIVE AGRICULTURAL DEVELOPMENT BANK LTD.NO.A94 REPRESENTED BY ITS SECRETARY ALLEPPEY.

2. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, TRIVANDRUM.

BY SR. GOVERNMENT PLEADER SMT. R. MEERA.
SRI.R. HARIKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 1365 OF 2004

Dated this the 22nd June, 2007

JUDGMENT

H.L.DATTU, C.J.

Some of the petitioners in O.P.No.6878 of 1991 are before us in this writ appeal. They are calling in question the correctness or otherwise of the orders passed by this Court in O.P.No.6878 of 1991 and also the orders passed in Review Petition No.481 of 1997.

2. Some of the petitioners in O.P.No.6878 of 1991 were before this Court in W.A.No.2215 of 1998. This Court by its judgment dated 18th November, 1998 has allowed W.A.No.2215 of 1998 and has set aside the orders passed by the learned single Judge. The Division Bench has further declared that the appellants therein are entitled to the relief under the Scheme of 1990. The orders passed by the Division Bench is as under:

> "8. From the definition of "eligible loan", it is clear that instalments of a term loan falling due after 2nd October 1986 which was overdue to a bank, also includes overdue interest. It is not disputed before us that instalments of interest were being paid and were overdue as on 2nd Octobe4 1986.
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> 9. Then a submission was made by counsel for

respondent No.1 that benefit under Ext.P1 Scheme is available only to non-wilful defaulter. This contention was not raised before the learned Judge and, therefore, we do not find any discussion in this regard in the impugned order dated 6.10.1998. We are, therefore, not required to go into this aspect of the case.

In the result, the appeal succeeds and is allowed. The impugned order dated 6.10.1998 is set aside and it is declared that appellants herein will be entitled to the relief under the Scheme of 1990."

3. Since the issue involved in this writ appeal is also the same as the issue involved in W.A.No.2215 of 1998, following the aforesaid decision, this writ appeal also requires to be allowed and accordingly, it is allowed. Whatever declaration was made in the aforesaid judgment is granted to the appellants in this writ appeal also.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

W.A.NO.1365 OF 2004

JUDGMENT

22nd June, 2007